

LABOUR DEPARTMENT

The 29th December, 1981

No. 9(1)81-6Lab./13939.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Universal Electrics Ltd., Mujesar Division, 20/3, Mathura Road, Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 164 of 1980

between

SHRI RAM KUMAR JAIN, WORKMAN AND THE MANAGEMENT
OF M/S. UNIVERSAL ELECTRICS LIMITED, MUJESAR
DIVISION, 20/3, MATHURA ROAD, FARIDABAD

Shri Sagar Ram Gupta for the workman.

Shri G.D. Maheshwari and Shri P.C. Dwivedi for the respondent-management.

AWARD .

This reference No. 164 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana, — vide his order No. ID/FD/21-80/12546, dated 10th March, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Ram Kumar Jain, workman and the management of M/s. Universal Electrics Limited, Mujesar Division, 20/3, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Ram Kumar Jain was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference, notices were issued to the parties and they appeared and filed their pleadings in the case. The case of the workman according to the demand notice and claim statement is that he joined the respondent management as machine operator since December, 1973 and was drawing his salary Rs. 10.54 Paise per day. His work and conduct was always satisfactory. The employer terminated his services on 28th November, 1979 which is quite illegal and un-justified and by way of unfair labour practices victimisation. The employer did not hold legal and proper enquiry into the matter of charges levelled against the workman and provisions of standing orders and principles of natural justice were violated in holding the enquiry and in terminating the services. So he is entitled for his reinstatement with full back wages and continuity of service. The case of the respondent according to their written statement is that it is a case of dismissal as a result of fair and proper domestic enquiry in conformity with the principles of natural justice. The workman was chargesheeted on 23rd October, 1979. The charges levelled against the workman are of serious nature which constitute misconduct under the certified standing orders of the company. The respondent held a domestic enquiry wherein the workman participated in the enquiry and full opportunity to cross-examine the witnesses and produce his own defence witness was given. The workman was allowed to take all possible help from his co-workmen Sarvshri Rajan and Kameshwar Singh, Joint Secretary of the Works Committee, who assisted the workman during the whole enquiry. The enquiry was conducted in a fair and

proper manner. The copies of the proceedings were supplied to him on the completion of which day proceedings. During the course of the enquiry neither he nor his co-workmen raised any objection regarding un-fairness of the enquiry. The Enquiry Officer adjudged the workman guilty of the charges levelled against him and after going through the report of the enquiry officer, the respondent management dismissed the workman on 28th November, 1979. The enquiry report was also given to the workman under his signatures, so the termination order is proper and justified and as per the provisions of the Certified Standing Orders of the Company. The workman was appointed on 10th March, 1974 and his work and conduct was always found un-satisfactory and disorderly. His rate of wages were Rs. 12.81 per day at the time of dismissal. The workman was a habitual offender and law breaker indulged himself in serious misconduct by throwing a subzi plate on the back of Shri R. K. Gupta, Labour Welfare Officer who was on his regular supervision of canteen services on 18th October, 1979 and subsequently tried to insult Shri R. K. Gupta, Labour Welfare Officer by using vulgar language. The respondent management appointed Shri D. C. Bhardwaj as an enquiry officer and the workman objected of the appointment of Shri D. C. Bhardwaj as an enquiry officer and on the objections of the workman the enquiry officer was changed and Shri P. N. Gupta was appointed as an enquiry officer in place of Shri D. C. Bhardwaj. The copies of the standing orders were also supplied to the workman. The enquiry officer kept in view all the norms of natural justice and afforded full opportunity to the workman by way of cross-examination of the management's witnesses by the workman. The workman was previously given so many warnings and chargesheets which are on record. The domestic enquiry was also previously held for serious charges against the workman and he was adjudged guilty of the charges. The charges were grave and of serious nature, severe punishment could have been awarded, but on the specific assurance of the members of the Works Committee and the workman, he was awarded a lesser punishment by stopping increment for one year,—vide letter, dated 25th June, 1978. In view of blemish and unclean past and present record of service, the workman was terminated. On the pleading of the parties, the following issues were framed :—

1. Whether proper and fair domestic enquiry was held by the respondent before dismissing the services of the workman ?
2. Whether the dismissal of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
3. Relief.

To prove these issues the respondent management produced three witnesses MW-1 Shri R. K. Gupta, Labour Welfare Officer of the respondent company, MW-2 Shri P. C. Dwivedi, Personnel Officer of the respondent and MW-3 Shri P. N. Gupta, Enquiry Officer in the domestic enquiry and produced the domestic enquiry file contained documents from Ex. M-1 to M-55. On the other hand the workman comes as his own witness and produced Ex. W-1 and W-1/1. My issuewise finding is as under :—

Issue No. 1

Issue No. 1 is whether fair and proper domestic enquiry was held by the respondent before dismissing the services of the workman ? To prove this issue the respondent filed the domestic enquiry file in the Court and the representative of the respondent argued that the workman on 18th October, 1979 threw a subzi plate on the back of Shri R. K. Gupta, Labour Welfare Officer, when he was on a regular supervision of canteen services and when he turned up to see who threw it on him, the workman uttered these words "KAISA LAGA" ? And uttered vulgar language which are very clear in the enquiry. The aforesaid act of the workman tantamounts to misconduct under sub-clauses (iii), (viii), (xvi) of clause 25 of the Certified Standing Orders of the Company. He

was given chargesheet, dated 23rd October, 1979 in respect of this incident and the workman replied on 25th October, 1979 in which he alleged that the management was plotting against him the false and fabricated charges. The explanation was considered by the respondent management and found un-satisfactory and decided to hold a domestic enquiry in respect of the charges. In order to provide opportunity to defend himself in respect of the charges, an enquiry was constituted on 26th October, 1979 and Shri D. C. Bhardwaj was appointed as Enquiry Officer. The workman objected for the same on 28th October, 1979 as Shri D. C. Bhardwaj was the legal adviser of the Company. On the objection of the workman the respondent appointed Shri P. N. Gupta as enquiry officer in place of Shri D. C. Bhardwaj and informed the workman, - vide letter dated 29th October, 1979 which is E.x. M-41. The enquiry officer held the domestic enquiry in the premises of the company on 2nd November, 1979. The Enquiry Officer explained the charges levelled against the workman and enquired whether he admits the charges or not. The workman denied the allegations then the enquiry officer inquired the workman whether he would like to represent by some co-workman in term of the standing orders of the company. The workman suggested the name of Shri G. D. Madan employee of the company and he was called before the enquiry officer to represent the workman and he refused to represent the workman. The Enquiry Officer gave time to the workman to think about the name of the person to whom he wanted to be represented in the enquiry, but the workman failed to mention the name of the co-worker as his representative to participate in the enquiry. The Enquiry Officer also enquired from the workman about the list of witnesses of the management before the commencement of the enquiry proceedings. The workman was represented by Shri Kameshwar Singh and Rajan in the enquiry proceedings. In the enquiry the workman and his representative were fully allowed to cross-examine the management witnesses. The enquiry proceedings were recorded in Hindi and each page of the proceedings were signed by the Enquiry Officer, management's representative, the workman and his representatives. The enquiry officer also gave the opportunity to the workman to submit written arguments after concluding of the enquiry and the enquiry officer submitted his detailed report adjudging the workman guilty of the charges levelled against him. The copies of the enquiry proceeding were also supplied to the workman at the close of day-to-day proceedings. The enquiry officer conducted the enquiry with the principle of natural justice and all fairness and the respondent management took the stand according to the certified standing orders and principle of natural justice. He further argued that no where in the claim statement the workman has pointed out any allegation against the enquiry officer that he was biased and did not hold the enquiry properly, in accordance with the provisions of the standing orders and in fairness with the principles of natural justice. The workman did not raise any objection or pointed out any allegation either against the enquiry officer or the management representative during the course of the enquiry proceedings. The workman submitted the written arguments in the enquiry proceedings, dated 14th November, 1979 and there is no single word either against the enquiry officer or representative of the management. He further argued that the workman did not point out any discrepancy in the enquiry proceedings. Even in the court not a single question was asked to the enquiry officer MW-3 or the management's representative MW-2 that the workman was not afforded full opportunity to cross-examine the management witnesses and he was not given full opportunity to lead his defence evidence as alleged by the workman in his statement in the Court. The allegations raised by the workman in his statement against the enquiry officer before this court are after-thought and not based on any documentary evidence. The management witnesses have clearly proved that the workman was offered full opportunity to defend himself in the enquiry proceedings. In the domestic enquiry the court has to see whether the workman concerned was informed about the charges levelled against him in clear and unequivocal terms and the enquiry proceedings were conducted by an impartial and un-biased person, Therefore the workman was afforded full opportunity to cross-examine the management witnesses and lead his evidence in his defence. The findings of the enquiry officer should be based on material produced before enquiry officer during the course of the enquiry proceedings.

He further argued that the act of the workman was not his first action in the factory. The workman was the habitual offender and law breaker indulging himself in serious misconduct. Even previously so many warnings and chargesheets were given to him which are on record. The domestic enquiry was also held previously for serious charges against the workman and he was found guilty of the charges, which were of grave and serious nature. On the specific assurance of the members of the Works Committee and the workman himself, he was awarded lesser punishment by stopping one increment for one year. The workman has given no answer to this allegation of the respondent in his statement or in his rejoinder. When an officer of the company is insulted in this way before other workmen it is a highly mis-conduct and the officer can not work in these circumstances and the workman was habitual to insult not only for this officer but for other officers also by filthy language. So when the enquiry officer report was put before the management, the management decided to terminate the services of the workman this time because he will spoil the whole atmosphere of the company and other workmen of the factory will also lead on the same way on which this workman is working and it will destroy the discipline of the factory without which there can be no working in the factory, which is the aim of the management to run the factory smoothly. So the action of the respondent management was quite correct according to law and standing orders adopted by the respondent and in accordance with the natural justice. The respondent management is justified for these orders.

The representative of the workman argued on this issue that no legal and proper enquiry was held by the respondent management. The respondent failed to provide the proper opportunity to the workman. The respondent did not supply the list of witnesses and other documents such as the complaint by the Labour Welfare Officer to the workman before starting of the enquiry. He argued that list of witnesses and the complaint filed by the Labour Welfare Officer to the respondent against the workman is a very essential part of the enquiry without which the workman could not reply the allegations levelled against him in the chargesheet. The complaint was like F.I.R. in the criminal cases. If it is not supplied to the workman before conducting the enquiry then it is denied opportunity to the workman. The workman demanded the documents and list of reliance, but that was not given to the workman up to the end of the enquiry proceedings. The enquiry officer also failed to supply the day-to-day proceedings to the worker which is a violation of the standing orders and denial of opportunity. He cited 1970 L.L.J. page 26 Supreme Court for this denial of opportunity but he has not supplied the cited book. He further argued that the respondent suspended the workman on 26th October, 1979, — vide letter Ex. M-39 which is illegal one. The workman should have been suspended if at all it needed before the chargesheet given to the workman. He further argued that the chargesheet was given by the manager of the respondent company where the chargesheet should have been given by the employer of the employee and the employer means the Board of Directors of the factory and not manager of the factory. The manager himself is an employee of the employer. In this way the respondent has violated the standing orders Ex. M-3 and the employer has not chargesheeted the workman which is illegal. The representative of the workman cited 1980 L.L.J. 456 Supreme Court and 1968 L.L.J. page 571 Supreme Court in this respect, but he has not supplied the books to refer in the case. He further argued that the findings of the enquiry officer were perverse and based on wrong facts which cannot be believed. The Enquiry Officer had not gone properly into the witnesses of the management. There is no appointment letter of the Enquiry Officer in the file which was withheld for some reason best known to the respondent and this is malafide on the part of the management. The workman was not informed through any letter for the appointment of the enquiry officer. It is also violation of natural justice. The documents must be given with the appointment letter of the enquiry officer. He further argued that the witnesses of the management in the enquiry should be dis-believed as there was many discrepancies in their statements. The witnesses in the enquiry are based of hear say evidence and they contradicting each other and in these

circumstances, it may be held that the enquiry was not fair and proper in the interest of justice.

After hearing the arguments of both the parties and going through the whole file, I am of the opinion that the domestic enquiry held by the respondent was fair, proper and according to the rules of the natural justice as argued by the representative of the management. The enquiry officer was an advocate from Delhi and impartial person and had no concern with any party and he had given full opportunity to the workman in all respect and the workman has not raised any objection about the fairness of the enquiry during the enquiry proceedings. The enquiry officer provided two persons to represent the workman in the enquiry proceedings and the workman was given the opportunity to file his written arguments in the enquiry. The workman had raised no objection at the time of enquiry which is before me. If there had been any objection to the workman he should have raised before the enquiry officer which he had not done. The representative of the management cited two references as under :—

1. "In a domestic enquiry strict and sophisticated rules of evidence under the Evidence Act are not attracted. There is no allergy to hear say evidence provided it has a reasonable nexus and credibility."

State Bank of India *versus* J.D. Jain, 1980 (56) FJR, Page 261.

2. "If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits no longer survives."

T.S. Ganesan *versus* Rahendra Cans (Tin) Industries Ltd., 1980 (40) FLR, page 21 (Mad. H.C.).

So I feel the enquiry was fair and according to the rules of natural justice. So this issue is decided in favour of the respondent-management and against the workman.

Issue No. 2:—

Issue No. 2 is as per reference. When issue No. 1 has already been decided in favour of the respondent-management then there is no need to discuss this issue at length. As I have discussed in issue No. 1 the domestic enquiry held by the respondent is quite fair and the respondent-management had considered the report of the enquiry officer in which the enquiry officer has proved the guilt of the workman and the management is correct in coming to the decision for the termination of the workman after considering the enquiry report in the interest of factory and other workmen. The management had saved the position of the staff and officers to whom this workman used to insult and used vulgar language before other workmen to insult them. The management need a peaceful atmosphere for the working of the factory which is only possible when there is discipline in the factory. So the punishment awarded by the management is quite justified and according to the requirements of the circumstances before them. So the termination order made by the respondent-management is justified and in order and the workman is not entitled to any relief. No order, as to costs.

This may be read an answer to this reference.

Dated, the 7th November, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endstt. No. 3224, dated 19th November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.